

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANNA MARIA VARELA

223 West La Paz Drive
Imperial, CA 92251

Registered Nurse License No. 514619

Respondent

Case No. 2008-19


OAH No. 2008020102

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on October 11, 2008.

IT IS SO ORDERED September 11, 2008.



President
Board of Registered Nursing
Department of Consumer Affairs
State of California

EDMUND G. BROWN JR., Attorney General
of the State of California
JANICE K. LACHMAN
Supervising Deputy Attorney General
KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-7859
Facsimile: (916) 327-8643

Attorneys for Complainant

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Anna Maria Varela
223 West La Paz Drive
Imperial, California 92251

Registered Nurse License No. 514619

Respondent.

Case No. 2008-19

OAH No. 2008020102

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
above-entitled proceedings that the following matters are true:

PARTIES

1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
the Board of Registered Nursing. She brought this action solely in her official capacity and is
represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
by Kent D. Harris, Deputy Attorney General.

2. Respondent Anna Maria Varela (Respondent) is represented in this
proceeding by attorney Melanie Balestra, NP, Esq whose address is 36 Santa Comba, Irvine, CA
92606.

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3. On or about August 18, 1995, the Board of Registered Nursing issued Registered Nurse License No. 514619 to Anna Maria Varela (Respondent). The Registered Nurse License was in full force and effect at all times relevant to the charges brought in Accusation No. 2008-19 and will expire on November 30, 2008, unless renewed.

JURISDICTION

4. Accusation No. 2008-19 was filed before the Board of Registered Nursing (Board) , Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 26, 2007. Respondent suffered a default due to her failure to file a notice of Defense in a timely manner. The Default was subsequently set aside on December 17, 2007, and the matter was set for hearing to commence on June 2, 2008. A copy of Accusation No. 2008-19 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2008-19. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 CULPABILITY

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2008-19.

4 9. Respondent agrees that her Registered Nurse License is subject to
5 discipline and she agrees to be bound by the Board of Registered Nursing (Board) 's imposition
6 of discipline as set forth in the Disciplinary Order below.

7 CONTINGENCY

8 10. This stipulation shall be subject to approval by the Board of Registered
9 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
10 Board of Registered Nursing may communicate directly with the Board regarding this stipulation
11 and settlement, without notice to or participation by Respondent or her counsel. By signing the
12 stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek
13 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails
14 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary
15 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal
16 action between the parties, and the Board shall not be disqualified from further action by having
17 considered this matter.

18 11. The parties understand and agree that facsimile or electronic copies of this
19 Stipulated Settlement and Disciplinary Order, including facsimile or electronic signatures
20 thereto, shall have the same force and effect as the originals.

21 12. In consideration of the foregoing admissions and stipulations, the parties
22 agree that the Board may, without further notice or formal proceeding, issue and enter the
23 following Disciplinary Order:

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1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when she resides outside
7 of California. Respondent must provide written notice to the Board within 15 days of any change
8 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where she has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which she has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of her good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to her employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after she obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
20 terminated or separated, regardless of cause, from any nursing, or other health care related
21 employment with a full explanation of the circumstances surrounding the termination or
22 separation.

23 **8. Supervision.** Respondent shall obtain prior approval from the Board
24 regarding Respondent's level of supervision and/or collaboration before commencing or
25 continuing any employment as a registered nurse, or education and training that includes patient
26 care.

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Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

11. **Cost Recovery.** Respondent shall pay to the Board costs associated with its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the amount of \$3,673.00. Respondent shall be permitted to pay these costs in a payment plan approved by the Board, with payments to be completed no later than three months prior to the end of the probation term.

If Respondent has not complied with this condition during the probationary term, and Respondent has presented sufficient documentation of her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation will apply.

1 12. **Violation of Probation.** If Respondent violates the conditions of her
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
4 license.

5 If during the period of probation, an accusation or petition to revoke probation has
6 been filed against Respondent's license or the Attorney General's Office has been requested to
7 prepare an accusation or petition to revoke probation against Respondent's license, the
8 probationary period shall automatically be extended and shall not expire until the accusation or
9 petition has been acted upon by the Board.

10 13. **License Surrender.** During Respondent's term of probation, if she ceases
11 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
12 probation, Respondent may surrender her license to the Board. The Board reserves the right to
13 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
14 take any other action deemed appropriate and reasonable under the circumstances, without
15 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
16 will no longer be subject to the conditions of probation.

17 Surrender of Respondent's license shall be considered a disciplinary action and
18 shall become a part of Respondent's license history with the Board. A registered nurse whose
19 license has been surrendered may petition the Board for reinstatement no sooner than the
20 following minimum periods from the effective date of the disciplinary decision:

21 (1) Two years for reinstatement of a license that was surrendered for any
22 reason other than a mental or physical illness; or

23 (2) One year for a license surrendered for a mental or physical illness.

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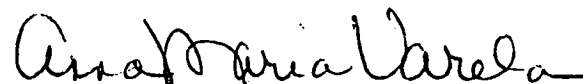
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28ACCEPTANCE


I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Melanie Balestra, NP, Esq. I understand the stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: 05/30/08.


ANNA MARIA VARELA (Respondent)
Respondent

I have read and fully discussed with Respondent Anna Maria Varela the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 5/29/08.


MELANIE BALESTRA, NP, Esq.
Attorney for Respondent

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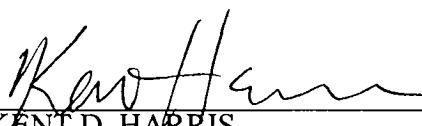
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 6/24/08

EDMUND G. BROWN JR., Attorney General
of the State of California

JANICE K. LACHMAN
Supervising Deputy Attorney General



KENT D. HARRIS
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: 03579110-SA2004101432
Varela stipulation.wpd

Exhibit A
Accusation No. 2008-19

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ARTHUR D. TAGGART
Supervising Deputy Attorney General
3 KENT D. HARRIS, State Bar No. 144804
Deputy Attorney General
4 California Department of Justice
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 324-7859
Facsimile: (916) 327-8643

7 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-19

13 ANNA MARIA VARELA
223 West La Paz Drive
14 Imperial, California 92251

A C C U S A T I O N

15 Registered Nurse License No. 514619

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about August 18, 1995, the Board issued Registered Nurse License
24 Number 514619 to Anna Maria Varela ("Respondent"). Respondent's registered nurse license
25 was in full force and effect at all times relevant to the charges brought herein and will expire on
26 November 30, 2008, unless renewed.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions . . .

6. California Code of Regulations, title 16, section ("Regulation") 1442 states:

As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life.

7. Regulation 1443 states:

As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5.

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1 **COST RECOVERY**

2 8. Code section 125.3 provides, in pertinent part, that the Board may request
3 the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 **FIRST CAUSE FOR DISCIPLINE**

7 **(Gross Negligence)**

8 9. Respondent is subject to disciplinary action pursuant to Code section
9 2761, subdivision (a)(1), on the grounds of unprofessional conduct. On or about October 25,
10 2002, and October 26, 2002, while assigned to work and on duty as a registered nurse in the
11 Emergency Room at Corcoran State Prison's Substance Abuse and Treatment Facility located in
12 Corcoran, California, Respondent was guilty of gross negligence in her care of inmate S. S.
13 within the meaning of Regulation 1442, as follows:

14 a. Respondent administered a potentially lethal dose of Demerol to inmate
15 S. S. A short time later, the inmate became unresponsive and stopped breathing.
16 Cardiopulmonary resuscitation was started and the attending physician, Dr. Kim Nguyen,
17 attempted to place a tube down the inmate's throat to assist with breathing (Respondent was also
18 present at the scene). The inmate was subsequently transported by helicopter to University
19 Medical Center in Fresno, California, where he was admitted to the Medical Intensive Care Unit.

20 b. Respondent failed to inform Dr. Nguyen at the scene that she had given a
21 potentially lethal dose of Demerol to the inmate.^{1/}

22 c. Respondent administered Demerol to the inmate without knowing the
23 normal or proper dosages and potential side effects of the medication.

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27 1. Dr. Nguyen alleges that Respondent admitted to him approximately one to two weeks following the
28 incident that she had given the inmate 100 mg Demerol by IV (rather than 30 mg intravenously and 70 mg
intramuscularly).

1 d. Respondent administered Demerol to the inmate from an unfamiliar
2 dispensing vial without having another practitioner check her computations and double check the
3 dosage.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Incompetence)**

6 10. Respondent is subject to disciplinary action pursuant to Code section
7 2761, subdivision (a)(1), on the grounds of unprofessional conduct. On or about October 25,
8 2002, and October 26, 2002, while assigned to work and on duty as a registered nurse in the
9 Emergency Room at Corcoran State Prison's Substance Abuse and Treatment Facility located in
10 Corcoran, California, Respondent was guilty of incompetence in her care of inmate S. S.
11 within the meaning of Regulation 1443, as follows:

12 a. Respondent failed to document Dr. Nguyen's verbal orders for Demerol
13 30 mg IV and 70 mg IM (intramuscularly) at the time she received the order. Further,
14 Respondent failed to complete her nurse's notes or prepare an Unusual Occurrence Report
15 immediately following the incident described in subparagraph 9 (a) above.

16 b. Respondent failed to inform University Medical Center of the cause of the
17 emergency described in subparagraph 9 (a) above.

18 **THIRD CAUSE FOR DISCIPLINE**

19 **(Unprofessional Conduct)**

20 11. Respondent is subject to disciplinary action pursuant to Code section
21 2761, subdivision (a), in that on or about October 25, 2002, and October 26, 2002, while
22 assigned to work and on duty as a registered nurse in the Emergency Room at Corcoran State
23 Prison's Substance Abuse and Treatment Facility located in Corcoran, California, Respondent
24 committed acts constituting unprofessional conduct in her care of inmate S. S., as set forth in
25 paragraphs 9 and 10 above.

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PRAYER

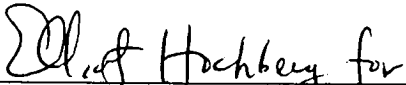
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 514619, issued to Anna Maria Varela;

2. Ordering Anna Maria Varela to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 7/13/07.


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California

Complainant